

1
17.05.2024
Ct. No. 11
Jayanta

WP.ST 1 of 2024

**Alauddin @ Alauddin Sarkar
Vs
The State of West Bengal & Ors.**

Mr. Mohan Kumar Sanyal

.....For the Petitioner.

Mr. Sourav Mondal

.....For the Principal Account
General, Respondent no. 4.

Mr. Tapan Kumar Mukherjee, Ld. AGP

Ms. Tuli Sinha

.....For the State.

The present writ petition has been preferred challenging an order dated 12th December, 2023 passed by the learned Tribunal in an original application being O. A. 728 of 2023.

Mr. Sanyal, learned advocate appearing for the petitioner submits that the petitioner joined the post of Night Guard in the office of the Revenue Inspector, Kalamari under the Block Land and Land Reforms Officer, Raninagar -II on 10th June, 2009, pursuant to the memo dated 9th June, 2009 issued by the respondent no. 7. He discharged continuous service till the date of his retirement on 31st January, 2019. As he could not complete 10 years of qualifying service, he was denied his pensionary benefits. Accordingly, he submitted a representation on 7th October, 2022 to the respondents praying for condonation of deficiency in qualifying service of about 4 months 10 days and for grant of pension in

terms of the provisions of Rule 36 of the West Bengal (Death cum Retirement Benefit) Rules 1971 (hereinafter referred to as the 1971 Rules. Such prayer was not considered. Aggrieved thereby, he approached the learned Tribunal and by an order dated 21st February, 2023 passed in an original application, being O. A. 700 of 2022, the matter was relegated to the concerned authority for consideration. Thereafter, he was communicated a memo dated 4th September, 2023 issued by the respondent no. 6 intimating that his prayer for condonation of deficiency in qualifying service has been rejected by the Finance Department. Aggrieved thereby, he again approached the learned Tribunal but his original application, being O. A. 728 of 2023 was disposed of by the order impugned in the present writ petition, refusing his prayer.

Mr. Sanyal, argues that Rule 36 of the 1971 Rules confers authority upon the competent authority to condone a delay up to six months in qualifying service with a view to make up the minimum prescribed qualifying service for the purpose of grant of pensionary benefits.

Drawing out attention to pages 29 and 30 of the writ petition, Mr. Sanyal submits that persons similarly situated with the petitioner had been granted the pensionary benefits upon condonation of the deficiency in qualifying service. However, applying

a different yardstick and without taking into consideration the facts and circumstances of the case, the petitioner's prayer was rejected *vide* memo dated 4th September, 2023, in a mechanical manner. Such argument, as advanced, was glossed over by the learned Tribunal. Such infirmity warrants inference of this Court.

Mr. Mondal, learned advocate enters appearance on behalf of the respondent no. 4.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State, however, denies and disputes the contention of the petitioner and submits that the petitioner admittedly did not complete 10 years of qualifying service and he even did not approach the competent authority for condonation of such deficiency in qualifying service, immediately after his retirement. In view thereof, the competent authority did not exercise discretion in his favour and such denial was rightly not interfered with by the learned Tribunal.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The memo dated 4th September, 2023 issued by the respondent no. 6 only intimates that '*the Finance Department has rejected the prayer of Alauddin Sarkar*'. However, no reason as to why the authority did not exercise discretion in favour of the petitioner

had been disclosed in the impugned order. An administrative decision should always be supported with reasons, howsoever brief. The principle of natural justice is attracted whenever prejudice is caused to a person by an administrative action. The principle implies a duty to act fairly.

In view thereof, the memo dated 4th September, 2023 issued by the respondent no. 6 and the order impugned in the present writ petition are set aside granting liberty to the petitioner to submit a fresh representation with all relevant documents to the respondent no. 3 along with a copy of this order and the writ petition, within a period of two weeks from date.

In the event such representation is submitted, the respondent no. 3 shall consider the same and pass a reasoned order, in accordance with law and communicate such decision to the petitioner within a period of six weeks from the date of receipt of such representation.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)

